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**Admitted in New York*
†Previously Admitted Pro Hac Vice in This Matter

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

BANXCORP,

Plaintiff,

v.

BANKRATE, INC.,

Defendant.

Civil Action No. 07-3398
(SDW)(MCA)

**DECLARATION OF JOHN G.
BALESTRIERE IN SUPPORT OF
MEMORANDUM OF LAW OF
PLAINTIFF'S FORMER
COUNSEL IN SUPPORT OF ITS
MOTION TO QUASH
AND FOR A PROTECTIVE
ORDER**

I, John G. Balestriere, an attorney duly admitted to practice law in the State of New York, affirm the following under penalty of perjury as follows:

1. I am an attorney with the law firm Balestriere PLLC, d/b/a Balestriere Fariello ("Balestriere Fariello" or "the Firm"), former counsel to

Plaintiff in this action. I submit this Declaration in support of the Firm's Motion to Quash and Motion for a Protective Order.

2. The Firm represented BanxCorp from July 13, 2007, to June 25, 2010, in a matter proceeding in the District Court of New Jersey, *BanxCorp v. Bankrate, Inc.* Index No. 07-3398 (SDW) (MCA) ("the New Jersey Action") and provided work resulting in the initiation of two piggyback lawsuits, *BanxCorp v. Lending Tree et al.*, District of New Jersey Docket Number 10-02467 (SDW)(MCA) ("the Lending Tree Action"), and *BanxCorp v. Apax Partners L.P. et al.*, District of New Jersey Docket Number 10-04769 (SDW)(MCA) ("the Apax Action").

3. On or about July 13, 2007, the Firm entered into an attorney-client relationship with Plaintiff-BanxCorp which included an agreement that the Firm would be paid for legal services it rendered on behalf of Plaintiff by contingency fee.

4. The Firm was terminated without cause from this representation on June 25, 2010, by Norbert Mehl, the principal of BanxCorp.

5. The Firm has received no payment of any kind for any of the legal services it rendered over the course of three years of representation, and as such, filed a complaint in New York Civil Supreme Court (*Balestriere PLLC v. BanxCorp and Norbert Mehl*, Index No. 650919/2010, "the New York Action") on July 13, 2010.

6. The Firm no longer represents BanxCorp in any capacity whatsoever.

7. The Firm filed the amended and operative complaint in this action ("the FAC"), on August 2, 2010. The Firm also filed and served notice in the 2007 and 2010 Actions of its intent to pursue its fees.

8. On or about March 23, 2011, the Firm received a subpoena issued by defendant in the New Jersey Action, seeking documents related to the New Jersey Action, including, but not limited to, drafts of complaints and other court filings prepared by Balestriere Fariello and documents relied upon in the preparation of such filings.

9. In addition, the Subpoena seeks drafts of complaints and other court filings prepared by Balestriere Fariello and documents relied upon in the preparation of such filings for the New York Action. These documents, which relate to the circumstances surrounding the termination without cause and Balestriere Fariello's upheld claims for *quantum meruit* and fraudulent inducement, are irrelevant for the anti-trust claims asserted in the New Jersey Action.

10. On March 29, 2011, BanxCorp filed a letter in the New Jersey Action requesting that the Court issue an order quashing the Subpoena.

11. Attached hereto this Affirmation, are true and correct copies of the following documents:

EXHIBIT A: Bankrate, Inc. Subpoena To Produce Documents, Information, Or Objects Or To Permit Inspection of Premises In A Civil Action

EXHIBIT B: March 29, 2011 Letter from BanxCorp to Judge Arleo

I hereby affirm the foregoing under penalty of perjury.

Dated: New York, New York
April 22, 2011

A handwritten signature in blue ink, appearing to be 'John G. Balestriere', written over a horizontal line.

Roberto Cuan

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